

Decision **DRAFT DECISION OF ALJ WETZELL** (Mailed 9/17/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999.

(U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the Reasonableness of Expenses Related to the Out-Of-Service Status of Pacific Gas and Electric Company's El Dorado Hydroelectric Project and the Need to Reduce Electric Rates Related To This Non-Functioning Electric Generating Facility.

Investigation 97-11-026
(Filed November 19, 1997)

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation Into Rates, Charges, and Practices of Pacific Gas and Electric Company.

Investigation 95-02-015
(Filed February 22, 1995)

**OPINION ON PETITION OF THE OFFICE OF RATEPAYER ADVOCATES
FOR MODIFICATION OF DECISION 00-02-046
(TERMINATION OF NUCLEAR DECOMMISSIONING FUNDING)**

1. Summary

In a petition for modification of Decision (D.) 00-02-046, the Office of Ratepayer Advocates (ORA) requests that the Commission eliminate ratepayer contributions for Pacific Gas and Electric Company's (PG&E) Diablo Canyon Power Plant (Diablo Canyon) nuclear decommissioning trust funds. This decision finds that ORA's petition raises factual issues that are currently being addressed in Application (A.) 02-03-020, PG&E's 2002 Nuclear Decommissioning Cost Triennial Proceeding (NDCTP). To avoid unnecessary duplication of litigation, ORA's petition is dismissed on procedural grounds.

2. Background

D.00-02-046 resolved most issues in PG&E's Test Year 1999 general rate case. Among other things, D.00-02-046 included \$26.5 million in PG&E's base electric rates for nuclear decommissioning expenses associated with Diablo Canyon Units 1 and 2. In the instant petition, ORA seeks to eliminate this funding. ORA summarizes its request as follows:

PG&E has recently made a filing with the United States Nuclear Regulatory Commission (NRC) that concludes that its nuclear decommissioning trust funds are currently over-funded. Since the decommissioning trust funds are over-funded, PG&E's ratepayers should no longer be contributing monies into these trust accounts, and should have their rates reduced to reflect this lower revenue requirement. ORA's Petition to Modify requests that the Commission modify D.00-02-046 to eliminate ratepayer contributions for PG&E's nuclear decommissioning trust funds for Diablo Canyon Power Plant. (ORA Petition, p. 2.)

PG&E and San Luis Obispo County filed responses to ORA's petition. Pursuant to Rule 47(g) of the Rules of Practice and Procedure and permission

granted by the Administrative Law Judge (ALJ), ORA file a reply to the responses.

3. Discussion

The basis for ORA's petition is the contention that ratepayer contributions to the Diablo Canyon decommissioning trusts are not required at this time because, as PG&E assertedly indicated in a November 30, 2001 NRC filing, the trusts are currently over-funded.¹ However, PG&E asserts in its response that ORA mistakenly relied upon the NRC filing in concluding that the trusts are over-funded. According to PG&E, its NRC application stated that the decommissioning trusts are fully funded to meet NRC-mandated decommissioning requirements. PG&E asserts that the funding level authorized by D.00-02-046 reflects costs of decommissioning beyond NRC requirements. According to PG&E, NRC funding requirements pertain only to the radiological portion of decommissioning costs, while the trust contributions authorized by this Commission are intended to cover non-radiological decommissioning and site restoration as well.

Without addressing the substantive merits of ORA's petition or PG&E's response, we find that factual issues requiring hearing are raised in the pleadings. In light of our express policy of pursuing a "conservative approach"

¹ PG&E's application before the NRC seeks consent for certain license transfers and conforming license amendments. This pertains to PG&E's Plan of Reorganization, which was filed with the Bankruptcy Court under Chapter 11 of the U.S. Bankruptcy Code. In relevant part, and subject to Bankruptcy Court approval, PG&E proposes to transfer the Diablo Canyon Power Plant and its licenses to a new entity, Electric Generation LLC and its subsidiary Diablo Canyon LLC. PG&E further proposes to assign the beneficial interest in the decommissioning trusts attributable to its Diablo Canyon Power Plant from PG&E to the new entity.

to determining funding requirements for the nuclear decommissioning trusts (D.00-02-046, p. 372), we are not inclined to eliminate the funding level adopted by that decision in the absence of a fully developed record supporting such elimination. In this respect, we concur with San Luis Obispo County's contention that we should "give great weight to balancing the importance of protecting ratepayers from excessive contributions with the need to ensure that the nuclear decommissioning trust remains adequately funded to accomplish its acknowledged goals." (San Luis Obispo County Response, p. 3.)

Although we determine that disposition of the petition on its merits requires hearings, we nevertheless determine that the petition should be dismissed on procedural grounds. In its March 7, 2002 response to ORA's petition, PG&E suggested that ORA's proposal more properly belongs in the NDCTP that PG&E expected to file just eight days later. ORA noted in its reply that PG&E had previously filed then withdrawn an NDCTP, and expressed concern that PG&E may again delay its NDCTP application.

On March 15, 2002, shortly after ORA filed the instant petition and one day after ORA filed its reply to the responses to the petition, PG&E filed A.02-03-020, its 2002 NDCTP. A prehearing conference in that proceeding was held on May 9, 2002, and the Assigned Commissioner subsequently issued a scoping memo providing that the issues to be addressed in that proceeding include "[t]he revenue requirement and rate changes, if any, necessary to fund the nuclear decommissioning trusts for Diablo Canyon Power Plant...." (A.02-03-020, *Assigned Commissioner's Ruling and Scoping Memo*, June 10, 2002, p. 3.) This clearly encompasses ORA's proposal to eliminate ratepayer contributions to the trust. Since disposition of ORA's petition on its substantive merits would require hearings, and the issues raised in the petition are wholly within the scope of the

NDTCP that is currently underway, it would be inefficient and wasteful of resources to litigate the petition. Moreover, dismissal of the petition will not be prejudicial to full consideration of ORA's substantive concerns.

4. Procedural History

This matter is assigned to Commissioner Wood and ALJ Wetzell. The ALJ's draft decision was issued for public review and comment in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. Since disposition of ORA's petition on its substantive merits would require hearings, and the issues raised in the petition are wholly within the scope of the NDTCP, which is currently underway, it would be inefficient and wasteful of resources to litigate the petition.
2. Dismissal of ORA's petition will not be prejudicial to full consideration of the issues raised by ORA therein.

Conclusion of Law

ORA's petition for modification of D.00-02-046 should be dismissed.

O R D E R

IT IS ORDERED that the petition of the Office of Ratepayer Advocates for modification of Decision 00-02-046 is dismissed without prejudice to consideration of the issues raised in the petition in Application 02-03-020.

This order is effective today.

Dated _____, at San Francisco, California.